Remarks

In view of the above amendments and the following remarks, reconsideration of the outstanding office action is respectfully requested.

Claim 74 has been amended by re-writing the claim in independent form. Claims 72-74 remain pending. No excess claim fees are due with this submission. This submission is accompanied by a petition for a three-month extension of time.

The rejection of claims 72-74 under 35 U.S.C. § 102(a) as anticipated by Longhurst et al., *J. Biol. Chem.* (e-publ. June 14, 2002) ("Longhurst") is respectfully traversed. Longhurst is not available as prior art under 35 U.S.C. § 102(a), because Longhurst does not evidence knowledge or use of the presently claimed invention by another. This is supported by the accompanying Declaration of Lisa Jennings under 37 C.F.R. §1.132 ("Jennings Declaration"). *See In re Katz*, 687 F.2d 450, 215 USPQ 623 (CCPA 1970); MPEP 2132.01 (p. 2100-73). Because Longhurst is not available as prior art, the rejection is improper and should be withdrawn.

Moreover, with respect to claim 74, applicants submit that Longhurst fails to identify the peptide consisting of SEQ ID NO: 3 *per se*. Instead, Longhurst merely indicates that the deletion mutant CD9D173-192, which is a 208 residue polypeptide, includes SEQ ID NO: 3. Therefore, the rejection of claim 74 is clearly improper even if Longhurst is available as prior art, which for the above reasons it is not.

For these reasons, the rejection of claims 72-74 under 35 U.S.C. § 102(a) is improper and should be withdrawn.

The rejection of claims 72 and 73 under 35 U.S.C. § 102(b) as anticipated by Jennings et al., *Ann. NY Acad. Sci.* 714:175-184 (1994) ("Jennings") is respectfully traversed.

Although Jennings describes making various antibodies raised against CD9 peptides, including "peptide 6," there is no description of "peptide 6" other than its relative location within the larger CD9 molecule (*see* Jennings at Figure 2). Consequently, a person of skill in the art would be left to speculate as to what the exact amino acid sequence of peptide 6 is.

Even if an invention is disclosed in a printed publication, that disclosure will not suffice as prior art sufficient to support a rejection under 35 U.S.C. § 102 or § 103 if it was not enabling. *In re Donohue*, 766 F.2d 531, 533, 226 USPQ 619, 621 (Fed. Cir. 1985). In this case, a person of skill in the art would not be able to identify the exact amino acid sequence of peptide 6, and hence, the person of skill in the art would not appreciate what

peptide 6 of Jennings is. In other words, without additional information the person of skill in the art would not be able to make the peptide *consisting of* SEQ ID NO: 5. For this reason, Jennings cannot anticipate the presently claimed peptide *consisting of* SEQ ID NO: 5.

For this reason, the rejection of claims 72 and 73 is improper and should be withdrawn.

In view of all of the foregoing, applicants submit that this case is in condition for allowance and such allowance is earnestly solicited.

Respectfully submitted,

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